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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 TYRRALL FARROW CANNON, No. CIV S-11-0243-CMK-P

12 Plaintiff,

13 vs.

ORDER

14 MATTHEW CATE, et al.,

15 Defendants.  
16 \_\_\_\_\_/

17 Plaintiff, a prisoner proceeding pro se, brings this apparent civil rights action  
18 pursuant to 42 U.S.C. § 1983. While plaintiff's initial pleading is presented on this court's form  
19 for civil rights complaints by state prisoners, plaintiff seems to be challenging the duration of his  
20 confinement. In particular, for relief plaintiff asks that the court direct either the California  
21 Department of Corrections and Rehabilitation or the Board of Parole Hearings to "recall  
22 sentence." Given the relief request, it seems that plaintiff may actually be intending to challenge  
23 the fact or duration of his confinement, in which case his sole remedy would be a habeas corpus  
24 petition. However, plaintiff chose to file this action on a form civil rights complaint. Thus,  
25 honoring plaintiff's choice of pleading, the court cannot conclusively say that plaintiff does not  
26 in fact intend to pursue some kind of as yet unspecified civil rights claim.

1 In order to allow plaintiff to clarify the nature of the action, the current pleading  
2 will be dismissed with leave to amend.<sup>1</sup> Plaintiff is cautioned that failure to file an amended  
3 complaint within the time provided in this order may result in dismissal of the action for lack of  
4 prosecution and failure to comply with court rules and orders.<sup>2</sup> See Local Rule 110.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's initial pleading (Doc. 1) is dismissed without prejudice and with  
7 leave to amend;
- 8 2. Plaintiff shall file an amended pleading within 30 days of the date of this  
9 order;
- 10 3. And the Clerk of the Court shall provide plaintiff with this court's form  
11 civil rights complaint by a state inmate.

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13 DATED: February 2, 2011

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15 **CRAIG M. KELLISON**  
16 UNITED STATES MAGISTRATE JUDGE  
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21 <sup>1</sup> This clarification is needed not only to determine the nature of the legal claim  
22 plaintiff intends to present to the court, but also to determine the appropriate filing fee. Civil  
23 rights action are subject to a \$350.00 filing fee whereas habeas corpus actions are subject to a  
filing fee of only \$5.00.

24 <sup>2</sup> If plaintiff intends to pursue a habeas challenge to the fact or duration of his  
25 confinement (i.e., a challenge to his sentence) seeking earlier release, he may wish to simply  
26 allow this action to be dismissed and file a separate habeas action in the appropriate court. If  
plaintiff intends to pursue a civil rights action relating to the conditions of his confinement, he  
should file an amended complaint on the form provided in which he sets forth how the actions of  
named individual defendants caused or contributed to a violation of his constitutional rights.